Re Goodwealth Trading Pte Ltd

HIGH COURT (SINGAPORE) — COMPANIES WINDING UP NO 330 OF 1989
YONG PUNG HOW CJ
11 DECEMBER 1990

Companies and Corporations — Winding up — Just and equitable — Directors having lost confidence in working with each other — Substratum of company ceasing to exist — Companies Act (Cap 50, 1990 Ed), s 254

Companies and Corporations — Quorum — No quorum at board meeting — Whether business transacted invalid — Whether irregularity can be cured — Principles to be applied — Companies Act (Cap 50, 1990 Ed), s 392

One of two directors of a company petitioned to have the company wound up on the ground that the it was just and equitable to do so. The company's restaurant business had ceased and the petitioner's relationship with the only other director and shareholder had deteriorated to such a state that they were no longer talking to each other. The other shareholder opposed the petition and at a board meeting of the company which was attended only by the opposing shareholder, solicitors were appointed to represent the company. The company then, through its solicitors, filed a motion to strike out the petition.

Held, dismissing the motion and allowing the petition:

(1) The appointment of the company's solicitors was irregular, and this irregularity could not be cured by s 392 of the Companies Act. The section is applicable to save proceedings at a meeting where the lack of a quorum is of little or no consequence, and no shareholders' interests are prejudiced by any decision taken at the meeting. The provision would not be applicable in the instant case where it would result in disputed decisions being taken by one of two shareholder groups in a company to the exclusion and possible disadvantage of the remaining shareholder. The appointment of the company's solicitors was therefore invalid. The firm of solicitors had no locus standi to further attend the proceedings and were excused.

(2) The company had ceased to carry on its restaurant business, and consequently the substratum of the company had disappeared. A company's substratum was the main object which it was formed to achieve. If it was no longer able to carry out its main object, its substratum was gone and any member may petition for a winding-up order on the just and equitable ground.

(3) The fact that the majority of shareholders may wish to keep the company in existence, and to exercise the powers to carry on a different kind of business, or even a similar business, will not prevent a dissenting shareholder from petitioning for a winding-up order. This would be so even if the company's memorandum specifically provided that each of its objects should be a principal object, because a court must determine the real object for which the company was formed, and would allow a winding-up petition if that object had to all intents and purposes been abandoned.

(4) In a situation as in the instant case where the company's substratum had disappeared, and there was opposition by one of the two shareholder groups to continuing in business with the other, it was clearly just and equitable that the company be wound up, so that the cash assets could be distributed and each of the two groups could go his own way.

[*Editorial Note*: The company has appealed to the Court of Appeal vide Civil Appeal No 46 of 90.]

Cases referred to

1 *Ebrahimi* v *Westbourne Galleries Ltd* [1973] AC 360 (folld)
2 *Re Toronto Finance Corp* [1930] 3 DLR 882 (refd)
3 *Morgan* v *45 Flers Avenue Pty Ltd* (1986) 10 ACLR 692 (refd)
4 *Ng Eng Hiam* v *Ng Kee Wei & Ors* [1965] MLJ 238 (distd)
5 *Re Semantan Estate (1952) Ltd* [1962] MLJ 285 (refd)
6 *Ng Eng Hiam* v *Ng Kee Wei & Ors* [1963] MLJ 73 (refd)
7 *Re Yenidje Tobacco Co Ltd* [1916] 2 Ch 426 (refd)
8 *Loch* v *John Blackwood Ltd* [1924] AC 783 (folld)

Legislation referred to

Companies Act (Cap 50, 1988 Ed) ss 254, 392

Evelyn Chia Ee Lin for the petitioner.
Ng Kai Ming for the company.
Patrick Wee Chow Sing for the opposing shareholder.
Lawrence Chua Tong Yong, watching brief for the company secretary.

Cur Adv Vult

Yong Pung How CJ: This was a petition by Tan Ean Toon ('the petitioner') who is a shareholder and director of Goodwealth Trading Pte Ltd ('the company') that the company be wound up by the court under the Companies Act (Cap 50, 1988 Ed) ('the Companies Act'), that a liquidator be appointed for the winding-up, and that an order be made for costs.

The facts were set out in several affidavits. There were four by the petitioner filed on 15 November 1989, 8 January 1990, 27 February 1990, and 9 April 1990. There were seven by Chua Kien How, the chairman of the company filed on 19 December 1989 (two affidavits), 12 January 1990 (two affidavits), 19 March 1990, 11 April 1990 and 25 April 1990. There was also an affidavit filed by Lawrence Chua Tong Yong, a solicitor, on 25 April 1990, and another affidavit by Chia Chee Wee, the manager of the company's restaurant business, filed on 9 April 1990.

It will be necessary to set out the background facts to this petition as disclosed by the affidavits in some detail. The company was a shelf company which was incorporated in Singapore on 22 December 1983 under the Act as a private company limited by shares, and was acquired by the petitioner sometime in 1984 for the purpose of incorporating a business which he was starting. The petitioner's intention was to open a fast food restaurant in the Orchard Road area. For this purpose, he succeeded in obtaining from the Shaw Foundation some space at their Shaw House in Orchard Road, and the business started there in December 1984 as the Chui Garden Noodle House specializing in the sale of Hong Kong noodles. The records show that the petitioner was the managing director of the company from 12 March 1984. The original capital of the company

was $2m divided into two million shares of $1 each of which $600,000 was paid up or credited as paid up. This capital was held in equal shares by the petitioner, by a friend one Moez Abbas Nomanbhoy, and by an investor one Chung Kek Choo who was introduced to the petitioner by his lawyer Lawrence Chua Tong Yong. In November 1985 Lawrence Chua also became a shareholder and the shareholding pattern was then changed as follows:

Petitioner	176,400 shares
Nomanbhoy	188,400 shares
Chung Kek Choo	188,400 shares
Lawrence Chua	46,800 shares
Total	600,000 shares

The restaurant's business, which was run on a day-to-day basis by the petitioner, was badly affected by the recession in 1985 and 1986. In fact, by August 1985, the rent was in arrears to the tune of $329,830 against a rent deposit of only $284,872.50. The landlords were willing to reduce the monthly rent from $94,957.50 to $70,000 but they insisted on full settlement of the accumulated arrears. No solution to this problem being in sight, the landlords issued Writ of Distress No 86 of 1986 which was executed against the company on 30 April 1986. The petitioner was still keen to continue the business, but the other shareholders wanted to close the restaurant. At this stage, another friend of the petitioner, Chua Kien How ('Chua'), who had known the petitioner since about 1980, came into the picture. He was known to the landlords' general manager and had a better credit standing with them. He was invited by the petitioner to be a shareholder of 50 per cent of the capital of the company while the petitioner would hold the other 50 per cent. Initially, however, Chua was not keen to be a shareholder, but was willing to help. He intervened with the landlords, and the problem over rent was resolved, with Chua providing a personal guarantee to the landlords on 6 May 1986 for $280,000. The writ of distress was withdrawn. Having become involved to this extent, Chua changed his mind about not being a shareholder, and the shareholding structure of the company was altered. By an agreement in writing dated 2 May 1986 it was agreed by the shareholders that the petitioner and Chua should take over the company from the other shareholders by buying over their shares at a token price of 1 cent per share. As for the relationship between the petitioner and Chua, there remains a difference of opinion as to what was agreed. According to the petitioner, it was agreed that they would be 50/50 owners, but as Chua had represented to the petitioner that the landlords had agreed to help only if he was the majority shareholder, the restructuring was effected in a manner which left Chua holding 76,800 shares in trust for the petitioner. According to Chua, however, he had insisted at the time of his entry into the company that he should be the majority shareholder, in view of the potential exposure to the landlords which he had assumed, and the petitioner had agreed to this. Whatever may have been the real understanding, this restructuring was effected by:

(a) Nomanbhoy and Chung Kek Choo each transferring his 188,400 shares to Chua, making him the registered shareholder of 376,800 shares or 62.80 per cent of the capital;

(b) Lawrence Chua transferring his 46,800 shares to the petitioner making him (together with his original holding of 176,400 shares) the registered holder of 223,200 shares or 37.20 per cent of the capital.

As a result of this restructuring Chua became a director and the chairman of the company in May 1986.

After the restructuring, Chua's involvement as chairman appears from the affidavit filed on 9 April 1990 by Chia Chee Wee, the manager of the company's restaurant business, to have been confined to signing cheques which were taken by the manager to his house or his office for his signature, and he was an infrequent visitor at the restaurant. The business of the restaurant continued to be run on a day-to-day basis by the petitioner and the manager. The restructuring coincided with the revival of the company's business and its fortunes, as business picked up after the end of the recession. But this led to problems between the two shareholders, central to which was clearly the control of the company. Chua is alleged by the petitioner to have embarked on a systematic strategy to bring other members of his own family into the company and to throw the petitioner out. First, in March 1987 Chua transferred 150,000 of his own shares to his wife Madam Ng Seok Ngoh which made her a third shareholder. Then, in February 1988, he tried to transfer some other shares to his brother Chua Ah Boi, and from August 1988 he made attempts to get his brother appointed as a director. He is also alleged to have tried to replace the company secretary because she refused to be manipulated by him. The result of all this was that from some time in 1987 the relationship between the petitioner and Chua progressively deteriorated until they had to communicate with each other through their mutual friend Lawrence Chua.

With regard to the 76,800 additional shares held by Chua, it is alleged by the petitioner that sometime in February 1987 Chua signed a transfer in favour of the petitioner at a price of one cent per share, and deposited the signed transfer with the company secretary. But on 13 March 1987, before it could be stamped and registered, he withdrew from the transaction and took back the transfer. Chua's explanation for this incident was that he had only agreed to this on the understanding

that the landlords would agree to release him from his guarantee which they refused to do, and also the petitioner had failed to pay him the $768 for the shares. On 14 October 1987 it is alleged by the petitioner that a meeting was convened at Lawrence Chua's office, during which Chua proposed, inter alia, a 51/49 shareholding in his favour with a retransfer of only 70,800 shares out of the 76,800 shares to the petitioner for a total consideration of one cent. This was not agreed by the petitioner. On 13 November 1987, the petitioner offered Chua $30,000 for all his shares in the company, but this offer in turn was not accepted by Chua. As there was no resolution of the dispute over these 76,800 shares in the company, the petitioner eventually commenced an action in the High Court on 10 November 1989 in Suit No 2069 of 1989 against Chua claiming a declaration that Chua held the shares as trustee, that the petitioner was the beneficial owner of the shares and was entitled to have them transferred to him; and claiming damages for loss sustained by reason of the wrongful refusal to transfer the shares. At the date of the hearing of this petition, this other action for a declaration was still awaiting hearing.

Within the company, one defensive tactic which was used by the petitioner throughout this confrontation was to refuse to attend directors' meetings, so that there could not be the necessary quorum of two for a valid directors' meeting under art 100 of the company's articles of association. In June 1988 Chua appointed a firm of solicitors Chua Hay & Wee to advise him, and it is of interest that thereafter he sent out to the petitioner a stream of notices calling directors' meetings. Lawrence Chua in his affidavit of 25 April 1990 listed directors' meetings called for the following dates: 31 August 1988; 5, 17 and 24 October 1988; 10 November 1988; 20 December 1988; 27 January 1989; 21 March 1989; 3 and 20 April 1989 and 12 and 25 October 1989. Because of the petitioner's refusal to attend meetings, none of these meetings could be properly convened or take place. Presumably, if the petitioner had attended any directors' meeting, the chairman's casting vote could have been used to appoint a third director to support Chua, and thereafter a more effective working control of the company would have passed to him. The result of the use by the petitioner of this defensive tactic was that, while the restaurant business could be continued in some sort of way, no corporate decisions of the board of directors could be made. In many ways, the virtual freezing of the company's management led to defaults by the company in complying with various statutory duties. Thus, on 18 May 1989, the company received a summons to appear in court for failure to furnish the Comptroller of Income Tax with a return of income and audited accounts for the year of assessment 1988. A few days later, on 25 May 1989 another summons was issued to Chua to appear in court for failure to hold an annual general meeting on 31 December 1988 and failure to lodge an annual return by 31 January 1989 as required under the Companies Act.

On 5 April 1989, the landlords served a six months' notice to determine the restaurant's tenancy on 31 October 1989 as they wished to redevelop the entire Shaw House property. On this happening, the petitioner wanted to wind up the company, and it is alleged by him that Chua told Lawrence Chua at about that time that he also wished to do so. The restaurant manager in his affidavit of 9 April 1990 stated that Chua spoke to him twice, at the restaurant in July 1989 and on the telephone in September 1989, to get rid of staff and to sell the equipment quickly. During this period of more than six months from April to October 1989, while the restaurant's tenancy was drawing to its inevitable end, no effort, and certainly no decision, appears to have been made by anyone to find alternative restaurant premises for the company elsewhere. Chua was to say later, in his affidavit of 25 April 1990, that efforts were made by him to find alternative premises and a letter from a leading firm of real estate agents, Jones Lang Wotton, was exhibited to his affidavit. But this was in December 1989, after the petition had been filed. In fact, joint instructions were given by the petitioner and by Chua to terminate the services of employees, to repatriate the all-important chefs from Hong Kong, and to dispose of the equipment and other tangible assets of the company by auction and by tender. The Hong Kong chefs were in fact given notices to determine their employment on 30 October 1989 and were given cheques for their final salaries which were signed by Chua. Finally, on 30 October 1989 the restaurant closed its doors for the last time and on 31 October 1989 all the restaurant furniture, fixtures and fittings, and the kitchen and operating equipment were sold by public auction. The company was left with two employees to wind things up, being the restaurant manager who left on 30 November 1989 and the accounts clerk who left on 31 December 1989. Since then, all creditors have been paid off, and the company is a mere shell, with all its assets in the form of deposits in the company's bank accounts. On 15 November 1989 the petitioner filed a petition to the court to wind the company up under s 254(1)(i) of the Companies Act which provides that:

> The Court may order the winding up if —
>
> (i) the Court is of opinion that it is just and equitable that the company be wound up.

The petition to wind up the company sparked off a chain of successive court actions. First, on 19 December 1989, the company, acting through its newly appointed solicitors, PK Wong & Advani, the validity of whose appointment was challenged by the petitioner,

filed a notice of motion supported by an affidavit by Chua to strike out the petition under O 18 r 19 on the ground the petitioner was relying essentially on the same facts as the action commenced only five days earlier in the High Court in Suit No 2069 of 1989, and was therefore frivolous, vexatious, scandalous or otherwise an abuse of the process of the court and accordingly should be struck out. Secondly, on the same day, the company also filed an ex parte summons-in-chambers seeking an interim injunction that the petitioner be restrained from proceeding further upon his petition by advertising it, pending the hearing of the company's application to strike out the petition. An interim injunction in terms of the summons was ordered the next day on 20 December 1989, but, on the application by the petitioner, was discharged on 15 January 1990 because the petition had already been advertised in two newspapers on 15 December 1989 and in the Government Gazette on 22 December 1989. A prohibitory injunction cannot operate against a person who has prior to the date of the order for injunction already done the act which by the injunction the applicant seeks to prevent him from doing. Thirdly, in response to this, on 27 February 1990, the petitioner in turn filed an ex parte summons-in-chambers seeking an order that Chua be restrained from proceeding with the fifth annual general meeting of the company which had been called for 8 March 1990, pending the hearing of the winding-up petition, and on 2 March 1990 an interim injunction in terms of the summons was duly ordered. On 3 April 1990, the company applied for this interim injunction of 2 March 1990 to be discharged and on 12 April 1990 Chua as a shareholder also filed a parallel application for the interim injunction of 2 March 1990 to be discharged. Accordingly, the two applications by the company and by Chua to discharge the interim injunction of 2 March 1990 against the holding of the fifth annual general meeting, the petition by the petitioner to wind up the company, and the motion by the company to strike out the petition, all came on for hearing before me eventually on the same day.

At the outset of the hearing, Miss Evelyn Chia for the petitioner raised a preliminary objection to the motion taken out by the company to strike out the petition. While conceding that the company, being a separate legal entity, had a right to separate legal representation, she contended that the appointment of PK Wong & Advani, the company's solicitors who had taken out the motion, purported to have been made at a board meeting at which there was no quorum, was therefore invalid. The solicitors had no locus standi, and in fact no authority from the company to take out the motion. In any event, the company's right to separate legal representation could not be an unqualified right in a case such as this, which was essentially a dispute between the only two shareholders of the company, who were already separately represented. The attempt to have the company separately represented again, partly on the pretext that there was a third shareholder in the form of Chua's wife, Ng Seok Ngoh, was no more than a stratagem by Chua to have dual representation at the hearing, with the costs of the company's counsel and solicitors being contributed to indirectly by the petitioner. No doubt without intending to do so, Mr Ng Kai Ming for the company and Mr Patrick Wee for Chua lent some force to Miss Chia's contention with an almost identical argument; this was that the absence of a quorum at the invalid board meeting on 25 October 1989, at which PK Wong & Advani were appointed, was a mere procedural irregularity which was cured by s 392(2) of the Companies Act which provides:

> A proceeding under this Act is not invalidated by reason of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.

Apart from the section, no authority was cited to me in support of this contention. In my opinion, on a proper construction, s 392(2) is limited in scope. An irregularity is not cured if *'the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court'*. Thus, the provision is clearly applicable to save the proceedings at a meeting where the lack of a quorum is of little or no consequence, and no shareholder's interests are prejudiced by any decision taken at the meeting. But the provision equally cannot be applicable in a case such as this, in which it will result in disputed decisions being taken by one of only two shareholder groups in a company to the exclusion and possible disadvantage of the remaining shareholder. In my judgment, therefore, the board meeting on 25 October 1989 and the proceedings of the meeting were invalid. Having come to this view, I ruled that the appointment of PK Wong & Advani was also invalid. The firm of solicitors had not been appointed by the company and therefore had no locus standi in the proceedings. I accordingly dismissed the company's application to discharge the interim injunction of 2 March 1990, and the company's motion to strike out the petition. Mr Ng Kai Ming was excused from further attendance.

The petition to wind up the company was presented on the ground that it would be just and equitable to do so. There is now a practically unlimited range of circumstances within which a winding-up order can justifiably be made on this ground. Judicial interpretation has added steadily to the categories of cases which may be brought under this ground, and it is inevitable that still more categories will be added by the courts in future. Among the most common cases have been those in which a director has been ousted from office, or where a deadlock has developed in the management of

the company's affairs, or where directors have lost confidence in working with each other, or where the company's substratum has disappeared. Although, for convenience, it has been possible to separate the cases into different categories, a principle which has become increasingly accepted is that courts will not hesitate to provide relief and wind up a company, as they would a partnership, if it is clear that the parties involved will no longer be able to work together. In the leading case of *Ebrahimi* v *Westbourne Galleries Ltd*,[1] the House of Lords applied partnership principles in making a winding-up order. Although this was a case in which a partner was in fact excluded, the judgments envisaged a wide extension of these principles to cover the cases where directors have lost confidence in working with each other. Lord Cross said at p 387:

> All that happened was that without one being more to blame than the other the two could no longer work together in harmony.

Lord Wilberforce who gave the leading judgment said at pp 379-380:

> My Lords, in my opinion these authorities represent a sound and rational development of the law which should be endorsed. The foundation of it all lies in the words 'just and equitable' and, if there is any respect in which some of the cases may be open to criticism, it is that the courts may sometimes have been too timorous in giving them full force. The words are a recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure. That structure is defined by the Companies Act and by the articles of association by which shareholders agree to be bound. In most companies and in most contexts, this definition is sufficient and exhaustive, equally so whether the company is large or small. The 'just and equitable' provision does not, as the respondents suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way.
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> It would be impossible, and wholly undesirable, to define the circumstances in which these considerations may arise. Certainly the fact that a company is a small one, or a private company, is not enough. There are very many of these where the association is a purely commercial one, of which it can safely be said that the basis of association is adequately and exhaustively laid down in the articles. The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements: (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence — this element will often be found where a pre-existing partnership has been converted into a limited company; (ii) an agreement, or understanding, that all, or some (for there may be 'sleeping' members), of the shareholders shall participate in the conduct of the business; (iii) restriction upon the transfer of the members' interest business; (iv) restriction upon the transfer of the members' interest in the company — so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere.

In the present case, the petition was opposed by Chua and his counsel put up a stout defence on purely technical grounds. It was contended on his behalf, first, that there was no deadlock in the management of the affairs of the company, at least not in the classical sense of a 50/50 ownership structure, as a result of which the company had found it impossible to carry on. This was because, until the petitioner's claim for the remaining 6,000 shares was decided in his favour in the other court proceedings, Chua presently had a majority holding; and even if the petitioner succeeded in reaching parity with him, Chua had a casting vote as chairman of the company which could be used to appoint an additional director or indeed break any other deadlock. At worst, if Chua acted improperly, the petitioner could always bring an action for oppression, but this was merely a speculation as to what could happen in the future which would be matter for another court action and was not relevant at the present time. Besides, the petitioner had not come to court with '*clean hands*' as required by Lord Cross in the *Westbourne Galleries* case[1] at p 387 (also see *Re Toronto Finance Corp*,[2] and *Morgan* v *45 Flers Avenue Pty Ltd*[3]). Any difficulty therefore in resolving the problems in the company's management had been caused entirely by the petitioner's dogged refusal to attend board meetings and to co-operate in every way with Chua, as he was contractually bound to do as a contributory. These were not arguments which commended themselves to me.

In this connection, it was submitted by Chua's counsel that the court was bound by the Privy Council decision in *Ng Eng Hiam* v *Ng Kee Wei & Ors*.[4] In that case, there had been two incidents, comparatively trivial in themselves, which had led to unfortunate results. The resulting misunderstanding between two equal groups of shareholders had escalated from mere '*face-saving*' into what can only be described as a Chinese family feud of considerable intensity. However, notwithstanding the hostility between the two groups, the company's rubber plantation business was still being carried on in a flourishing condition and its affairs were conducted smoothly. The company could still carry on with advantage and profit to all the shareholders, and the winding-up would not necessarily have been in the interests of both groups. On this fact alone, the decision in the *Ng Eng Hiam* case[4] can be distinguished from the present case. The final outcome in that case, however, was much influenced by the extraordinary opinion which Ong J expressed in the High Court, which was against

the evidence, that there seemed to be reasonable hope of reconciliation and co-operation between the two directors if ordinary good common sense were employed. In the High Court case which is reported as *Re Semantan Estate (1952) Ltd*[5] he said at p 287:

> I could not, and still cannot believe, that businessmen of the calibre and standing of the petitioner and Ng Chin Siu cannot, if they have to, be large-hearted enough to treat a mutual misunderstanding as if there had never been one.

The Court of Appeal (Thompson CJ, Hill JA and Barakbah JA) fell back on Ong J's view of the dispute. In considering this point, Hill JA said in *Ng Eng Hiam* v *Ng Kee Wei & Ors*[6] at p 77:

> I do not consider that a stage of such continued quarrelling and animosity has yet been reached between the petitioner and the second respondent and there seems to be reasonable hope of reconciliation and co-operation if ordinary good sense is employed.

In the same vein Barakbah JA said at p 78:

> This is a family concern and I feel that it would not be impossible for them to resolve their differences and carry on with the spirit of co-operation that had existed from 1952 to 1957.

In the Privy Council decision of *Ng Eng Hiam*'s case[4] Lord Donovan, after referring to these views of Hill JA and Barakbah JA, felt constrained to say:

> Their Lordships cannot override this view, even if they felt disposed to do so, which they do not.

It is difficult to believe that the decision in *Ng Eng Hiam*'s case[4] will be followed now in the Singapore courts.

A total deadlock in the management of a company's affairs in the shape of an equal 50/50 ownership seldom happens in practice, but the court will also order a winding-up where there is a practical deadlock in the management of a company's affairs. In *Re Yenidje Tobacco Co Ltd*[7] there were two equal shareholders and directors. The relationship of trust and confidence between them broke down, to such an extent that one would not speak to the other. Lord Cozens-Hardy MR referred to partnership principles, in saying at p 430:

> All that is necessary is to satisfy the court that it is impossible for the partners to place that confidence in each other which each has a right to expect, and that such impossibility has not been caused by the person seeking to take advantage of it.

In the same case, Warrington LJ said at p 435:

> I am prepared to say that in a case like the present, where there are only two persons interested, where there are no shareholders other than those two, where there are no means of overruling by the action of a general meeting of shareholders the trouble which is occasioned by the quarrels of the two directors and shareholders, the company ought to be wound up if there exists such a ground as would be sufficient for the dissolution of a private partnership at the suit of one of the partners against the other. Such ground exists in the present case.

Much more common than the instances of deadlock are those cases of what one might call a quasi-partnership, as in *Ebrahimi* v *Westbourne Galleries Ltd*,[1] where there is no real or actual deadlock, whether practical or total, but the relationship of trust and confidence between directors has broken down. In such circumstances, even having a right to participate in the management of a company would have little meaning if the relationship of trust and confidence has broken down. In *Loch* v *John Blackwood Ltd*,[8] the board of directors was dominated by the majority shareholder whose acts led inevitably to the conclusion that he regarded the company as the product of his own labours and was trying to buy out the minority shareholders, who were not directors, at an undervalue. The company was a small private company where the shareholders were related by family. The Privy Council held:

> It is undoubtedly true that as the foundation of applications for winding-up, on the 'just and equitable' rule, there must lie a justifiable lack of confidence in the conduct and management of the company's affairs. But this lack of confidence must be grounded on conduct of the directors, not in regard to their private life or affairs, but in regard to the company's business.

In the present case, the relationship between the parties had deteriorated to such an extent that, even if the landlords had not decided to redevelop Shaw House, and the restaurant had been able to continue business in its premises, it would no longer have been possible for the two parties to continue to participate together in any form of business enterprise. They were not even on speaking terms. As Miss Chia put it, it would only have brought on a marathon of litigation. In such circumstances, the court cannot stand aside, much less remain in an ivory tower, and comfort itself by saying that the minority party can always bring an action later for oppression, if need be, as was suggested by Chua's counsel. To do so would be to risk bringing the court into disrepute.

Even if there should be any residual doubt about the justification for winding up the company on the ground that the directors have lost confidence in working with each other, the issue would be finally settled by the fact that the company has ceased to carry on its restaurant business, and consequently the substratum of the company has disappeared. A company's substratum is the main object which it was formed to achieve. If its main object was to carry on a certain business, and it is no longer able to carry on that business, its substratum is gone, and any member may petition for a winding-up order on the just and equitable ground. A memorandum of association invariably contains a long list of ancillary objects, with a correspondingly long list of powers which the company may exercise to achieve

these objects. But the fact that the majority of shareholders may wish to keep the company in existence, and to exercise the powers to carry on a different kind of business, or even a similar business, will not prevent a dissenting shareholder from petitioning for a winding-up order. This will be so even if the company's memorandum specifically provides that each of its objects shall be a principal object, because a court must determine the real object for which the company was formed, and will allow a winding-up petition if this object has to all intents and purposes been abandoned.

In the present case, the company's substratum was clearly the restaurant business in the choice location which Shaw House offered, in the heart of the best shopping and tourist district in Singapore, and the company was actually a shelf company which the petitioner purchased to cloak the business with a corporate personality. Even during the recession in 1985 and 1986 when the company was unable to pay even the rent on the premises, the petitioner was minded to soldier on, and Chua himself was brought in to save the business. With the landlord's decision to redevelop the whole property and consequently to terminate all the tenancies, including the company's, it is clear that this restaurant business came to an end. Chua himself was involved in the steps taken to close the business, including terminating the employment of the all important Hong Kong chefs and other employees, and auctioning off the equipment, furniture and fittings. As a result, there was no longer any business long before the petition came on for hearing, and all the assets of the company had been realized and converted into cash deposits at the company's banks. In actual fact, therefore, the company's substratum had disappeared. I could not understand why Chua wanted the company to continue in existence, and oppose the petition, without withdrawing the obvious inference that for his own reasons he wanted to hang on to the control of the petitioner's share of the capital, free of interest. The suggestion by Chua that the substratum of the company had not been affected, as the company had only ceased to carry on its restaurant business because the landlords, the Shaw Foundation, were redeveloping Shaw House, and that he was looking for alternative premises to carry on the business or some other business was clearly an afterthought, for the sole purpose of supporting his opposition to the petition for a winding-up order, and was of no merit, especially as he appears to have been a relatively inactive participant in the actual management of the company's restaurant business. In such a situation, where the company's substratum has disappeared, and there is opposition by one of the two shareholder groups to continuing in business with the other, it is clearly '*just and equitable*' that the company be wound up, so that the cash assets can be distributed and each of the two groups can go his own way. For a court to refuse to order a winding-up and in effect force the warring parties to continue in partnership, when, as in the present case, it is clear that the parties can no longer work together would merely be to endorse an exercise in futility. In the circumstances, I ordered that the company be wound up, and made the necessary consequential orders for the appointment of the liquidator and for costs.

Order accordingly.

Solicitors: *Spencer Gwee & Co*; *PK Wong & Advani*; *Chua Hay & Wee.*

Reported by *Mathavan Devadas*

MBF Finance Bhd v Yong Yet Miaw & Anor

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 726 OF 1989
CHAO HICK TIN J
31 DECEMBER 1990

Civil Procedure — Registration of foreign judgment — Setting aside — Not just or convenient

Words and Phrases — 'Not just or convenient' — Rules of the Supreme Court 1970, O 67 r 9(3)

The judgment debtors stood as guarantors for a debt owing to MBF from Sun Hun. MBF obtained summary judgment in the High Court of Malaya in Kuala Lumpur for M$1,750,000 and interest plus M$260,895.37 together with interest at 15% pa from 1 February 1986 until date of payment. MBF successfully applied for an order that the judgment be registered as a judgment of the High Court of Singapore. Subsequently the judgment debtors applied to have the registration of the judgment set aside. This was refused and the judgment debtors appealed. The judgment debtors relied on the fact that Sun Hun was resisting a claim for the money, including a counterclaim for breach of the loan agreement. On this basis they applied to set aside the registration on the ground that it was 'not just or convenient'. It was also argued that the judgment of the Kuala Lumpur High Court was not clear in respect of interest.

Held, dismissing the appeal:

(1) A foreign judgment is not impeachable on its merits.

(2) The grounds upon which a Singapore court must not register a judgment of a Commonwealth country are set out in s 3(2) of the Reciprocal Enforcement of Commonwealth Judgments Act. Besides these statutory grounds, the court has a discretion not to register when it is 'not just and convenient' or when there is some other sufficient reason not to register the judgment.

(3) 'Just or convenient' has the same effect as 'where it is practicable and the interests of justice require it'.

(4) Nothing had been shown why a duly pronounced judgment of a Malaysian High Court should not be carried out. The commercial utility of such guarantees must not be